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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.NO.32435 OF 2019

AND

W.M.P.NO.32756 OF 2019

T.Mariammal

...Petitioner

Versus

1. The District Collector
Tiruvannamalai District,
Tiruvannamalai.
2. The Revenue Divisional Officer,
Redressal Tribunal for Maintenance and
Welfare of Parents and Senior Citizens,
Tiruvannamalai Revenue Division,
Tiruvannamalai.
3. The Tahsildar,
Keelapennathur Taluk,
Tiruvannamalai District.
4. Magimaidoss

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records in connection with the order of the 2nd respondent dated 01.02.2019 made in Case No.11 of 2018 and quash the same and consequently, direct the 2nd respondent to dispose of the petition dated 07.09.2018 in accordance with the provisions under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, by restoring the property of measuring an extent of 1 acre 13 cents comprised in Survey No.42/8, bearing Patta No.252, Sanipoondi Village, Keelapennathur Taluk, Tiruvannamalai District, in favour of the petitioner.



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For Petitioner : Mr.R.Janakiram
For RR1 to 3 : Mr.V.Veluchamy
Government Advocate
For R4 : Mr.R.Malaichamy

ORDER

This writ petition has been filed challenging the impugned order passed by the second respondent dated 01.02.2019 made in Case No.11 of 2018 and consequently, directing the 2nd respondent to dispose of the petition dated 07.09.2018 in accordance with the provisions under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 by restoring the property of an extent of 1 Acre 13 Cents comprised in Srurvey No.42/8, bearing Patta No.252, Sanipoondi Village, Keelapennathur Taluk, Tiruvannamalai District in the petitioner's favour.

2. The petitioner is a senior citizen and she was purchased punja land measuring to an extent of 1 acre 13 cents comprised in Survey No.42/8, Patta No.252, Sanipoondi Village, Keelapennathur Taluk, Tiruvannamalai District from her sister Kanikkai Mary by virtue of release deed, dated 30.11.1990 vide Doc.No.1389 of 1990. From the date of purchase, she is the absolute possession and enjoyment of the property. After the demise of her husband, on the assurance was made by her two sons to look after her, she settled the said property equally in favour of her two sons namely Magimaidoss and Arockianathan by way of two settlement deeds, dated 22.07.2002 vide Doc.Nos. 769 and 770 of 2002. However, her elder namely 4th respondent herein did not keep up his promises, and therefore, she cancelled the two settlement deeds vide Doc.Nos.829 and 830 of 2002, dated 09.08.2002. Since the younger son Mr.Arockianathan looked after her with due care, she settled the aforesaid property in favour of her minor grandsons namely (i) Edwin Inbaraj (ii) Albert of Arockianathan. However, the fourth respondent, continuing to remain in possession, eventhough he had no title on the property. Meanwhile, the minor beneficiaries of the property through their guardian and father Arockianathan filed a suit in O.S.No.128 of 2016 before the District Munsif Court, Thiruvannamalai District for a declaration of title and for permanent injunction against the fourth respondent and the same was dismissed by judgment dated 28.08.2018. Further, the property was not an ancestral property



of her husband, but the same having been devolved upon through her father. Therefore, the fourth respondent has no right to question the title and she alone shall decide as to whom the said properties should be transferred. Therefore, she made a petition dated 07.09.2018 and 28.09.2018 before the respondents under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, seeking restoration of her property illegally possessed by the fourth respondent. Hence, the 1st respondent by his letter dated 18.09.2018 has forwarded the same to the 2nd respondent who is the Competent Authority for Maintenance and Welfare of Parents and Senior Citizens. Though the 2nd respondent conducted an enquiry, and on hearing the facts and circumstances of the case, has dropped the proceedings by passing an impugned order dated 01.02.2019. Eventhough the 2nd respondent accepted her contention that she is having authority to cancel the settlement deeds instead of passing appropriate order in the above petitioner, remanded the same to the 3rd respondent for taking appropriate action in reference to the earlier suit filed by the minor settlees. Therefore, the order dated 01.02.2019 passed by the Competent Authority cum the 2nd respondent is against the law and therefore, the same is liable to be set aside. Hence, the petitioner has come forward with the present writ petition.

3. Counter affidavit filed by the second respondent/RDO stating that the petitioner challenging the impugned order dated 01.02.2019, the petitioner executed gift deeds in favour of her two sons (i) Magimaidoss and (ii) Arokiyanathan each one half of the land measuring to an extent of 0.45.5 hectare comprised in S.No.42/8 of the above said Sanipoondi Village on 30.11.1990 for her maintenance. But her elder son namely Magimaidoss/4th respondent failed to maintain her. Therefore, she cancelled the above gift deeds on 06.08.2002. Subsequently, she gifted the land to her grandsons dated 29.03.2016 and requested the respondents to transfer the Patta for the land in the names of her two grandsons namely (i) Edwin Inbaraj and (ii) Albert. Hence, this is only a request for Patta transfer and not covered by Maintenance and Welfare of Parents and Senior Citizens Act. Therefore, the petitioner's request has not been considered under the above said Act and subsequently, the judgment in Case No.11 of 2018 on 01.02.2019 was delivered by the second respondent dated 01.02.2019. Therefore, no locus standi to apply for transfer of patta in the name of persons to whom this petitioner has gifted the land. Hence, the above said writ petition has to be dismissed as devoid of merits.

4. Heard both sides and perused the materials available on record.



5. On perusal of the records, it is seen that the Patta has been stands in the name of the respective parties namely (i) Arockianathan and (ii) Magimaidas. The petitioner requested only for Patta transfer, which is not covered under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. In the meanwhile, her minor two grandsons namely (i) Edwin Inbaraj (ii) Albert of Arockianathan, filed a suit in O.S.No.128 of 2016 before the learned Additional District Munsif Court, Tiruvannamalai, for declaration and permanent injunction against the fourth respondent herein and the same was dismissed by judgment dated 28.08.2018. Therefore, she approached the respondents for transfer of Patta in favour of her two grandsons.

6. It is also seen that the settlement deeds executed by the petitioner, dated 29.03.2016, which have been suppressed in her affidavit and subsequently, she has filed a petition under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for Short MAWOPASC Act) No.11 of 2018 before the Tribunal, Tiruvannamalai. It is further seen that if the petitioner not taken care of by the petitioner's sons namely Magimaidoss and Arockianathan, the settlement deed Nos.829 and 830 of 2002, dated 06.08.2002 executed by the petitioner, were cancelled. On enquiry revealed that the petitioner stated that she has been received a sum of Rs.11,000/- per month from her husband retirement benefits and no difficulties to maintain her life, and hence, action has been dropped under MAWPASC Act. Therefore, the grievance of the petitioner only to resolve on the basis of the judgment and decree in O.S.No.128 of 2016, dated 28.08.2018. Further, it is the duty of the said sons namely Magimaidoss and Arockiyanathan to take care of their mother. Hence, the aforesaid findings passed by the second respondent/RDO to find out what is the extent of hold on both her sons and the value of the said lands and what is the income derived from her sons and there cannot be valued at any point of time.

7. Considering the above facts and circumstances of the case, and taking into account the submissions made on either side, without expressing any opinion on the merits of the petitioner's petition or the case pleaded by the petitioner in the present writ petition, the Writ Petition is disposed of, with a direction to the second respondent to consider the petitioner's petition dated 07.09.2018 and pass appropriate orders, on merits and in accordance with law, after issuing notice to the petitioner and necessary parties concerned within a period of eight weeks from the date of receipt of a copy of



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this order. Consequently, connected WMP.No.32756 of 2019 is also closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msm

To

1. The District Collector
Tiruvannamalai District,
Tiruvannamalai.
2. The Revenue Divisional Officer,
Redressal Tribunal for Maintenance and
Welfare of Parents and Senior Citizens,
Tiruvannamalai Revenue Division,
Tiruvannamalai.
3. The Tahsildar,
Keelapennathur Taluk,
Tiruvannamalai District.

+1cc to M/s.R.Malaichamy, Advocate, S.R.No.56725

+1cc to the Government Pleader, S.R.No.56237

W.P.No.32435 of 2019

KSM(CO)
RLP(17/12/2021)